

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
HONG MAI,

Plaintiff,

- against -

STATE OF NEW YORK,
DEPARTMENT OF HEALTH, et al.

Defendants.
-----X

MISCELLANEOUS
REPORT AND
RECOMMENDATION

CV

ROSS, J.

POLLAK, M.J.

On September 29, 2011, Hong Mai, proceeding *pro se*, filed a motion with this Court seeking leave to file a civil complaint. In accordance with the October 10, 2000 Order of the Honorable Allyne R. Ross that enjoined Ms. Mai from filing any civil action in the Eastern District of New York without obtaining prior leave from the undersigned, the Court has reviewed the allegations in the proposed Complaint and respectfully recommends that the Complaint not be filed for the reasons stated below.

DISCUSSION

Ms. Mai's proposed federal Complaint against the New York State Department of Health, the New York State Office of Temporary and Disability Assistance, the New York City Department of Social Service, Medicaid, CVS Pharmacy, and Rite Aid Pharmacy challenges the defendants' rejection of a Medicaid authorization code that she attempted to use in order to refill a drug prescription. Ms. Mai claims to be eligible for Medicaid prescription drug benefits. Medicaid is administered in New York City by the New York State Department of Health, the

New York State Office of Temporary and Disability Assistance, and the New York City Department of Social Service, defendants. Ms. Mai alleges that on May 12, 2011, she attempted to fill a drug prescription by using a prior authorization code she received in February 2011 from Medicaid through the New York City Department of Social Services. At the time she presented the code in May, at least three months had elapsed. Accordingly, defendants CVS Pharmacy and Rite Aid Pharmacy rejected the code as expired. On May 25, 2011, Ms. Mai properly requested a fair hearing by the New York State Department of Health to review the denial of her prescription drug benefit under 18 N.Y.C.R.R. § 358-3.1. The hearing was held on June 24, 2011 and continued on September 1, 2011 before an administrative law judge ("ALJ"). The ALJ determined that the authorization code had expired and that the agency had not received a request from Ms. Mai's physician to issue an updated authorization. Accordingly, the ALJ found that Ms. Mai's complaint did not present a question over which the Commissioner had jurisdiction to issue a determination.

Ms. Mai's proposed federal Complaint seeking review of the ALJ's judgment is improperly filed in the Eastern District of New York.¹ This Court lacks subject matter jurisdiction over her claim because there is neither a federal question at issue nor complete diversity between the parties. Accordingly, it is respectfully recommended that Ms. Mai's motion for leave to file her Complaint be denied.

Any objections to this Report and Recommendation must be filed with the Clerk of the

¹Appeals from an ALJ's fair hearing decision may be filed in New York State Supreme Court, pursuant to N.Y. C.P.L.R. §§ 7801-7806.


Court, with a copy to the undersigned, within fourteen (14) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's Order.

See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
October 12, 2011


Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York